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Senate Education, Employment and Workplace Relations Committee
Department of the Senate, Parliament House

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Dear Committee Secretary

Thank you for the opportunity to make this personal submission to your inquiry into Academic Freedom. I am a legal academic engaged in research and teaching, and involved in public and media debates on issues within my area of expertise (international law).

A. Level of Intellectual Diversity and Ideological, Political and Cultural Prejudice

The implication in the Terms of Reference that Australian universities may *not* be intellectually diverse, or may reflect ideological, political cultural prejudices, is a regrettable and politicised stain on the high standards of professionalism amongst Australian academics, and appears driven by a handful of isolated, non-representative and non-systemic incidents.

The production and dissemination of knowledge and scholarship should be as free as possible from political interference, whether by the Parliament, governments, or bureaucracies. Only by establishing the conditions of academic freedom can the full potential for intellectual progress within our universities be realised. Academics must, of course, obey the law in a democratic society; but within that outermost limit, political intervention should be avoided.

The relative autonomy of academics and their insulation from political trends (and attacks) is necessary to ensure that they can freely develop independent critical thought and expression and thus contribute new insights to society. What some polemical commentators perceive as ‘prejudice’ in academia may well be better described as work within a particular theoretical mode of scholarship or school of thought; that some dislike fields such as ‘cultural studies’ or ‘post-modernism’ does not establish the existence of ‘prejudice’ within universities. Academic freedom is also an important civil society pillar against creeping authoritarianism.

The scholarly community itself is best placed to ensure academic diversity and freedom. Peer review of research maintains rigorous academic standards and ensures that any academic who is genuinely ‘prejudiced’ – *in the sense of making claims or assertions which are not supportable or verifiable by evidence or argumentation* – will not prosper as an academic.

Further, the academic community is also best placed to deal with allegations of misconduct by academics, such as in the rare case where an academic subjects a student's views to ridicule or vilification. Indeed, universities already have mechanisms in place for dealing with allegations of professional misconduct by academics, and for applying appropriate penalties.

The implication in the Terms of Reference of this inquiry that universities may be prejudiced and lacking in diversity itself has the potential to undermine academic freedom and diversity, since it sends a message to academics that they are under suspicion and that their views require policing by politicians. In my view it encourages self-censorship by academics, who already face structural pressures to conform to certain ways of thinking. As Edward Said argues in *Representations of the Intellectual: The 1993 Reith Lectures* (1994), at p 74:

Nothing... is more reprehensible than those habits of mind in the intellectual that induce avoidance, that characteristic turning away from a difficult and principled position which you know to be the right one, but which you decide not to take. You do not want to appear too political; you are afraid of seeming controversial; you need the approval of a boss or an authority figure; *you want to keep a reputation for being balanced, objective, moderate*; your hope is to be asked back, to consult, to be on a board or prestigious committee, as so to remain within the responsible mainstream.... [emphasis added]

For an intellectual, these habits of mind are corrupting *par excellence*. If anything can denature, neutralize, and finally kill a passionate intellectual life it is the internalization of such habits.

B. The Need for Teaching to be Pluralist, Accurate, Fair, Balanced and Contextual

As statements of principle, pluralism, accuracy, fairness, balance and context in teaching are hard to contest in the abstract. But what these principles mean in their application to a particular university lecture or curriculum topic will differ and may well be contested.

For example, a university course devoted to evolutionary biology can hardly be expected to include a component on creationism, just as a course on religious studies cannot be expected to also teach evolutionary biology. If a legal academic teaches a specialised course on a particular strand of legal theory or tradition of thought, the lecturer cannot be expected to inject 'balance' by teaching other theories or traditions which are not designed to be part of the course, or to represent a 'plurality' of views other than those that are the focus of inquiry.

Academia is not politics or journalism; and the production and dissemination of knowledge cannot be simplistically categorised into a dichotomy of 'left' and 'right' wing perspectives in the manner which obsesses some media commentators, polemicists or political ideologues. Academic endeavour cannot be easily judged within the neat frames of reference or evaluative criteria sometimes used by other sectors of society; and scholarly standards themselves must remain the litmus test of whether a certain teaching approach is acceptable.

None of this is to suggest that academics ought to be immune from legitimate public or political criticism; but it is to caution against unnecessarily political interference in the regulation of academic activities. In my view, the existing self-regulation of university teaching is sufficient to ensure that the above principles are evident in university teaching (in so far as those principles are relevant):

- There are accepted conventions within academia for formulating teaching curricula, and Faculty or Departmental procedures for approving the adoption of new courses;
- Universities routinely issue teaching and course evaluation forms to students, to allow students to provide feedback on teaching methodologies and course content;
- New academic staff at many universities are required to undertake courses of instruction in teaching and learning practices, to equip and train them in teaching skills;
- Complaints can be made informally or formally at any time about academic misconduct in teaching or in relations with students.

Collectively, these regulatory measures ensure that university teaching is ordinarily of a high standard and includes sufficiently critical perspectives on course materials. As an academic I have never come across a case where an academic has negatively assessed a student's performance because that student does not share the political or other views of that academic. In my experience, some of the very best student essays or exam answers are those which take issue with the assumptions underlying the selection of course materials or assessment topics, including by criticising flaws in the scholarly publications of the lecturer himself!

Academics vote and academics inevitably have political opinions. Some academics share their political views with their students as a device for engaging students in discussion and therefore for elucidating alternative (and respectfully received) viewpoints. Other academics do not make their own political views known, as is their right.

In some ways, it is arguably admirable for an academic to articulate his or her political views to students, since once on the table, those views are transparently known to all – in contrast to where an academic's politics remain invisible and therefore an unknown quantity. As humans, academics cannot be neutral automatons who fail to engage psychologically with the material they teach; and academics who simply transmit information, without processing those views from their own interpretive perspective, are usually poor teachers.

What must be clearly stated is that students cannot expect not to be confronted or challenged by views put to them by their lecturers, including by political, ideological or cultural viewpoints with which students disagree. As the noted intellectual Edward Said writes in *Representations of the Intellectual: The 1993 Reith Lectures* (1994), at p 9: 'Least of all should an intellectual be there to make his/her audiences feel good: the whole point is to be embarrassing, contrary, even unpleasant.'

C. Ways of Promoting and Protecting Intellectual Diversity and Freedom

As others have noted, academic freedom in Australia has come under sustained pressure in recent years by a combination of forces – commercialisation; changes to research funding; and anti-terrorism laws (including sedition, censorship, ASIO powers and new offences).¹ To this list should be added increases in student numbers and consequent academic workloads, which erode the time available to academics to utilize such academic freedom as exists.

The following steps are recommended to better protect academic freedom in universities:

1. Parliament should legislatively protect academic freedom in universities, for example based on the protection in s 161 of the *Education Act 1989* (New Zealand);
2. Workplace agreements in all Australian universities should include a minimum standard clause on the protection of academic freedom;
3. Individual academic employment contracts should expressly provide for the protection of academic freedom in employment.

Please be in touch if you require any further information.

Yours sincerely



¹ E MacDonald and G Williams, 'Banned Books and Seditious Speech: Anti-Terrorism Laws and Other Threats to Academic Freedom' (2007) 12 *Australia & New Zealand Journal of Law & Education* 29-46.

APPENDIX

Education Act 1989 (New Zealand), s 161: Academic Freedom

- (1) It is declared to be the intention of Parliament in enacting the provisions of this Act relating to institutions that academic freedom and the autonomy of institutions are to be preserved and enhanced.
- (2) For the purposes of this section, **academic freedom**, in relation to an institution, means—
 - (a) The freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions:
 - (b) The freedom of academic staff and students to engage in research:
 - (c) The freedom of the institution and its staff to regulate the subject matter of courses taught at the institution:
 - (d) The freedom of the institution and its staff to teach and assess students in the manner they consider best promotes learning:
 - (e) The freedom of the institution through its chief executive to appoint its own staff.
- (3) In exercising their academic freedom and autonomy, institutions shall act in a manner that is consistent with—
 - (a) The need for the maintenance by institutions of the highest ethical standards and the need to permit public scrutiny to ensure the maintenance of those standards; and
 - (b) The need for accountability by institutions and the proper use by institutions of resources allocated to them.
- (4) In the performance of their functions the Councils and chief executives of institutions, Ministers, and authorities and agencies of the Crown shall act in all respects so as to give effect to the intention of Parliament as expressed in this section.